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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 2

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Mrs. Palley: draft resolution

1997/... Situation of human rights in India

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian sub-continent traditions of:

(i) Imperialism towards peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions; and

(vi) Unrestrained capitalist and caste exploitation of labour and natural and other resources,

Recognizing also that India, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout the State,

Recognizing, however that the Constitution of India contains a detailed Bill of Rights and Directive Principles of State Policy protective of human rights; that a National Commission on Minorities and a National Commission on Human Rights, together with some state human rights commissions, exist; and that there is extensive constitutional and legislative protection for Scheduled Castes and Scheduled Tribes,

1. Observes, in this fiftieth anniversary year of the independence of India, the world's second most populous State and its largest democracy, that:

(i) The Human Rights Committee, after consideration of the third periodic report of India, in its concluding observations (CCPR/C/79/Add.81, para. 23) expressed its concern at allegations that the police and other security forces do not always respect the rule of law and that in particular court orders for habeas corpus are not always complied with, particularly in disturbed areas;

(ii) The Human Rights Committee also expressed concern about the incidence of custodial deaths, rape and torture (ibid., para. 23);

(iii) The Special Rapporteur of the Commission on Human Rights on the question of torture had received information indicating that torture was practised routinely by the army, the Border Security Force and the Central Reserve Police Forces against the vast majority of persons arrested for political reasons in Jammu and Kashmir (E/CN.4/1996/35, 9 January 1996, para. 70);

(iv) The Special Rapporteur on the question of torture continued to receive information in 1996 indicating that the security forces in Jammu and Kashmir had tortured detainees systematically and that the torture was said to be facilitated by the practice of holding

detainees in temporary detention centres without access to courts, relations or medical care, while some reported torture included severe beatings, electric shocks, crushing the leg muscles with a wooden roller, burning with heated objects and rape (E/CN.4/1997/7, 10 January 1997, para. 87);

(v) The Special Rapporteur on the question of torture reported claims that detainees were rarely produced before a magistrate, despite a law requiring this to be done within 24 hours, and that since 1990 over 15,000 habeas corpus petitions had been filed but that in the vast majority of cases the authorities had not responded to the petitions (ibid., para. 88);

(vi) The Special Rapporteur on the question of torture remained concerned at the persistence of allegations of torture, followed often by death in custody (ibid., para. 90);

(vii) The Special Rapporteur on the question of torture reported claims that on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture (ibid., para. 88);

(viii) The Working Group on Enforced or Involuntary Disappearances was notified by the Government of India that allegations of violations of human rights by the security forces in Jammu and Kashmir were immediately investigated, and that so far some 272 personnel had been punished (E/CN.4/1997/34, 13 December 1996, para. 183);

(ix) The total number of personnel punished has scarcely increased over the total given two years earlier to the Sub-Commission and this despite the presence of several hundred thousand active army personnel in Jammu and Kashmir;

(x) The Working Group on Enforced or Involuntary Disappearances also noted that the Supreme Court in Punjab had received a writ petition alleging the secret cremation by the Punjab police of hundreds of bodies, leading to investigation by the Central Bureau of Investigation (ibid., para. 184);

(xi) There is reliable information that 2,500 bodies, mainly of young men, were secretly cremated and that the lawyer who initiated the petition was arrested and has disappeared;

(xii) The Special Rapporteur on extrajudicial, summary or arbitrary executions has received numerous reports of violations of the right to life in India and allegations concerning deaths inflicted in custody resulting from torture and ill-treatment inflicted by police personnel during the preliminary stages of detention when access to outsiders is routinely denied, and that the alleged perpetrators in the police and armed forces enjoy virtual impunity, such violations in large number being claimed to be committed in Jammu and Kashmir, Punjab and Uttar Pradesh (E/CN.4/1996/4, para. 231);

(xiii) The Special Rapporteur on extrajudicial, summary or arbitrary executions remained deeply concerned at the reported failure of the Government to prosecute members of security forces involved in human rights violations (ibid., para. 238);

(xiv) The Special Rapporteur on extrajudicial, summary or arbitrary executions has made repeated efforts since 1993 to be invited to visit India (E/CN.4/1996/4, 25 January 1996, para. 241 and E/CN.4/1997/60, 24 December 1996, para. 22) but no invitation has materialized;

(xv) The Special Rapporteur on the question of torture has likewise made repeated requests to visit India (E/CN.4/1996/35, 9 January 1996, para. 77 and E/CN.4/1997/7, 10 January 1997, para. 90) and regrets the reluctance of the Government of India to invite him to the country, as does the Human Rights Committee (CCPR/C/79/Add.81, para. 23);

(xvi) The National Commission on Human Rights, while doing excellent investigating and recommendatory work within the scope of its mandate under the Protection of Human Rights Act, is prevented by Clause 19 from investigating directly complaints of human rights violations against the armed forces, having to request a report from the Government, while complaints to the Commission are subject to a one-year time-limit, thus preventing the investigation of many alleged past human rights violations (ibid., para. 22 and CERD/C/304/Add.13, 17 September 1996, para. 16);

(xvii) Although the Terrorist and Disruptive Activities (Prevention) Act (TADA) has lapsed, about 1,600 persons detained thereunder are

still in detention under its provisions (CCPR/C/79/Add.81, para. 25), while the National Security Act and, in some areas of India, the Public Safety Act remain in force, a fact regretted by the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13, para. 21), while the Armed Forces (Special Powers) Act has been applied to areas declared as disturbed for many years, as for example throughout Manipur since 1980 and in other areas of the State much longer, this meaning that the Government of India has in effect been using emergency powers without resorting to article 4.3 of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.81, para. 19);

(xviii) The Human Rights Committee has reported that the use of special powers of detention remains widespread and has expressed concern at legislative proposals to reintroduce parts of TADA, leading to further violations of the International Covenant on Civil and Political Rights, which is now not complied with in respect of the duty promptly to inform the person concerned of the reasons for his or her arrest and in respect of the need for due proceedings to decide to continue detention (ibid., paras. 24 and 25);

(xix) The Human Rights Committee has recommended that continued detention be determined by an impartial tribunal and that at very least there be a central register of detainees and that the International Committee of the Red Cross be admitted to all types of facilities, particularly in areas of conflict (ibid., para. 24);

(xx) Even civil proceedings (as well as criminal proceedings) may not be commenced against members of the security and armed forces acting under Special Powers without the permission of the central Government, and the Human Rights Committee has expressed its concern over this matter, noting that it contributes to a climate of impunity (ibid., para. 21);

(xxi) The Committee on the Elimination of Racial Discrimination has expressed great concern that the Government of India claims that the situation of the Scheduled Castes and Scheduled Tribes does not fall within the scope of the International Convention on the

Elimination of All Forms of Racial Discrimination (CERD/C/304/Add.13, 17 September 1996, paras. 2 and 14);

(xxii) The Committee on the Elimination of Racial Discrimination has also expressed serious concern that Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention (ibid., para. 15);

(xxiii) The Committee on the Elimination of Racial Discrimination has pointed out that, although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the Scheduled Castes and Scheduled Tribes, and although social and educational policies have been adopted to improve their situation and to protect them from abuses, widespread discrimination and the relative impunity of those who abuse them, such measures have limited effect, and the Committee is particularly concerned at reports that people belonging to the Scheduled Castes and Scheduled Tribes are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in schools in violation of article 5 (f) of the Convention (CERD/C/304/Add.13, para. 23);

(xxiv) The Human Rights Committee has also expressed its concern that, despite measures taken by the Government, members of Scheduled Castes and Scheduled Tribes, as well as the so-called backward classes and ethnic national minorities, continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant including inter-caste violence, bonded labour and discrimination of all kinds (CCPR/C/79/Add.81, para. 15);

(xxv) The Human Rights Committee has further expressed grave concern that legislative measures to outlaw child marriages, dowry-related violence, suttee, foeticide and infanticide of females are not sufficient and that measures designed to change the attitude allowing such practices are necessary in order to protect women from all discriminatory practices including violence (ibid., para. 16);

(xxvi) The Human Rights Committee likewise expressed concern that women in India have not been accorded equality in the enjoyment of their rights and freedoms in conformity with articles 2 and 26 of the Covenant (ibid., para. 17);

(xxvii) The Human Rights Committee also expressed concern at the extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court of India is far higher than was mentioned by the Government of India in its third periodic report to the Committee, and noted its concern that eradicative measures taken do not appear to be effective in achieving real progress in the release or rehabilitation of bonded labourers (ibid., para. 29);

(xxviii) The Human Rights Committee deplored the high incidence of child prostitution or trafficking of women and girls into forced prostitution, regretting the lack of effective measures to prevent such practices and to protect victims, as well as deploring the lack of effective measures to stop the practice of Devadasi (dedication of small girls as temple prostitutes);

(xxix) The Human Rights Committee further expressed concern that there had been little progress in implementing the Child Labour (Prohibition) Act 1986 and recommended that urgent steps be taken to remove all children from hazardous occupations, together with immediate steps to implement the recommendations of the National Human Rights Commission to respect the constitutional requirement that it is a fundamental right for all children under 14 to have free and compulsory education;

2. Warmly welcomes the renewed talks between India and Pakistan under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

3. Urges the Government of India:

(i) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) To ratify the Optional Protocol to the International Covenant on Civil and Political Rights and to reconsider its extensive

reservations to the Covenant referred to by the Human Rights Committee (CCPR/C/79/Add.81, para. 14);

(iii) To invite the Special Rapporteur on the question of torture to visit India within the current year;

(iv) To invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit India within the current year or soon thereafter;

(v) To give expedited consideration to the report of the Human Rights Committee and all its many recommendations;

(vi) To give similar consideration to the concluding observations of the Committee on the Elimination of Racial Discrimination made as long ago as 17 September 1996;

(vii) In particular, to consider strengthening the powers of the National Human Rights Commission to investigate and initiate legal proceedings in respect of any violations of human rights by whomsoever they may be committed;

(viii) To end the virtual impunity of the vast numbers of police and armed and paramilitary forces employed by the State to counter terrorism and crime;

4. Calls upon the Government of India:

(i) To ensure that its police and security forces do not use excessive or arbitrary force to counteract terrorist actions;

(ii) To act in accordance with the restrictions on the use of force and firearms set out in applicable international instruments;

(iii) To take legislative and administrative steps necessary to ensure that all cases of alleged deaths in custody, or in the course of "encounters", and all allegations of torture, inhuman treatment and rape are promptly investigated and that criminal prosecutions in accordance with due process of law and international standards are brought against any alleged perpetrators;

(iv) To ensure that its army, other security forces and police are warned: that rape is an offence destructive of life, especially in locations and cultures where women and girl victims are forever stigmatized and irremediably damaged psychologically; that exemplary criminal punishment will be imposed on any assailant; and that officers whose men are repeatedly alleged to have been

involved in such conduct will face severe disciplinary sanctions for failing to maintain honour and order among Indian forces;

(v) To abolish the use of and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

5. Decides to recommend that the Commission on Human Rights consider the situation in India at its next session.